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## A Question of Sources

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# A QUESTION OF SOURCES

Police are demanding a university archive hand over confidential interviews for a murder inquiry. **Michael Foley** explores an ethical conflict

At first sight, Boston College's Belfast Project is an oral history programme designed in some sort of historians' heaven: protagonists from both sides of the Northern Ireland political divide willing to talk about their involvement in politics and violence to researchers under strict confidentiality. Add to that the fact that the researchers were award-winning journalist and author Ed Moloney, who has covered the North for *The Irish Times* and the Dublin-based *Sunday Tribune*; Anthony McIntyre, PhD, a Ballymurphy republican and former IRA prisoner; and Wilson McArthur, a Shankill Road former Progressive Unionist Party activist and political science graduate of Queen's University, and you have a mix that offered scholarly rigour with journalistic engagement and a deep understanding of the issues and people being researched.

Now the project has become mired in a mix of politics, ethics and the law, with the Northern Ireland police trying to get hold of the archive and appeals are being made for the intervention of the Secretary of State, Hillary Clinton and the US Attorney General, Eric Holder.

The project started in 2001 when some 40 or so paramilitaries and activists were interviewed over the next five years, according to *Boston College*

magazine. The interviewees were people who had lived and fought through 30 years of political violence, either on the republican or loyalist side. Those interviewed were given a guarantee that material would be held securely in Boston College's Burns Library until the interviewees died or consented to their interviews being made public.

*Voices From the Grave: Two Men's War in Ireland* by Ed Moloney, published in 2010, was the first material to be made public, following the deaths of Brendan Hughes, former IRA commander, prisoner and hunger striker, and David Ervine, former UVF member and member of the Northern Ireland Assembly for the Progressive Unionist Party. The book relied heavily on the interviews, giving it authority and authenticity, with Moloney providing context and a narrative.

Hughes, a controversial figure, was responsible for some of the most violent events of the Troubles. He believed the Good Friday Agreement, and the compromises that entailed, meant he lost everything he had fought for and that his former comrades, especially his friend Gerry Adams, had sold out. Ervine, on the other hand, steered the UVF towards ceasefire and believed he and his community emerged out of the troubles with a stronger union with Britain.

The book offered insights into what made the two men do what they did. There was no doubt that the Brendan Hughes half of the book is the most riveting. Ervine is more restrained, telling us little if anything about what he did while in the UVF before being arrested. Hughes, on the other hand, appears to be completely honest and saw this project as his only chance to tell his story. We learn why he joined the IRA, how he was trained, what life was like for an IRA volunteer, and then commander, how decisions were taken, what life was like in Long Kesh prison, along with the blanket protest and later the hunger strikes. He also explains the morality that guided him. And we learn about Gerry Adams.

Adams has always denied he was ever a member of the IRA. Not only does Hughes say he was a member, but that he was Hughes's commanding officer. But worse than membership, which so many people assume anyway, Hughes accused Adams of ordering the killing of Jean McConville, a Belfast mother of ten, in 1972, a claim Adams has always denied. Jean McConville's body was finally discovered on a beach in Co Louth in 2003, having been unearthed by a storm.

Jean McConville is alleged to have been an informer, a charge Hughes believes, so her killing is not Hughes's main issue – killing is what happened to informers. Her body was buried and was not found at the time of her death, so she became one of the 'disappeared'. For Hughes that makes it a murder. To have left her body to be found would have been a warning to others, and that is the only reason to kill an informer, he maintained.

Meanwhile, another interviewee, Dolours Price, convicted of car bombing the Old Bailey in London in 1973, was mentioned in a Belfast paper in connection with the allegation of Gerry Adams's involvement in the McConville disappearance. A newspaper claimed its reporter knew what she had told the Boston College researchers concerning the disappearance of Jean McConville. That led to the Police Service of Northern Ireland (PSNI)'s demand for material held in the archive relating to the death and disappearance of McConville.

If anyone thought such a demand would take years they were sadly mistaken because of the mutual legal assistance treaty between the UK and the US. The treaty, which was signed as part of the war on terrorism, to allow suspects to be moved from one country to another, was now invoked. Anthony McIntyre is reported to have asked at a recent oral history conference why Boston College, with its law school, did not know about the treaty and its possible impact.

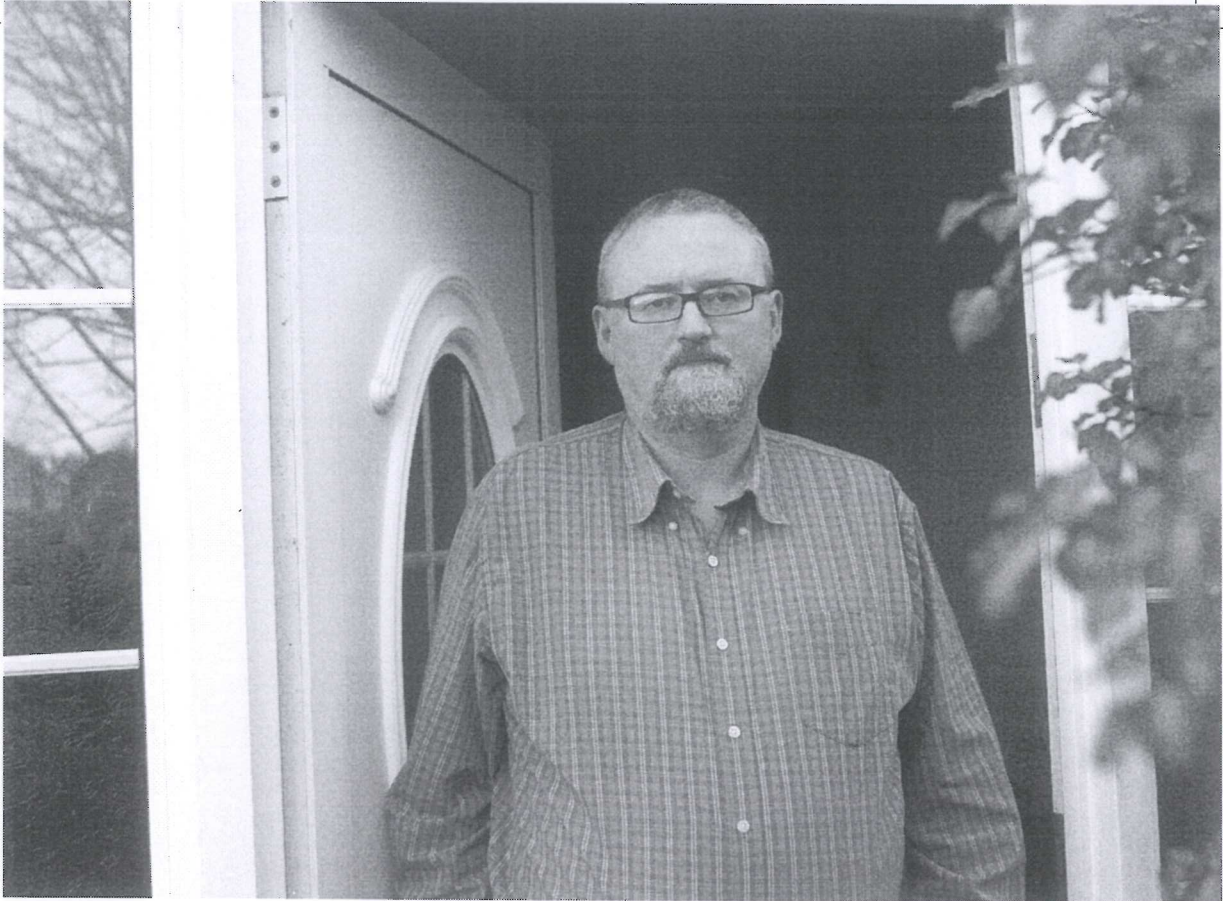
The PSNI's reasons for attempting to gain access to academic material in a US university archive was not a huge mystery. On the face of it, the request was a simple one: they were trying to solve an old case and bring to justice a terrorist group guilty of murdering a mother and then burying her body, so her family could not even mourn her passing. Eamonn McCann, in the publication *Counter Punch*, suggested that old RUC officers, still smarting over the disappearance of their beloved police force, saw this as an opportunity to get Gerry Adams, who they blamed for its demise.

On the other hand, one might think a major university would defend its academic integrity and fight the case, and even point out it was not Boston College's role to investigate crimes for the PSNI. That did not happen.

To the dismay of Ed Moloney and Anthony McIntyre, Boston College decided not to contest a lower-court order to hand the tapes over. The archive is now in the custody of the court while Maloney and McIntyre continue legal action to try to prevent the material being passed to the British authorities.

Following a judgement of the First Circuit Federal Appeals Court in Boston in July of this year, Moloney and McIntyre are seeking a rehearing and want their rights under the First Amendment taken into account. The famous endorsement of freedom of the press applies equally to academic freedom, according to a statement issued by Ed Maloney and Anthony McIntyre. However, they also maintain that the judgement has turned the case into a political issue that should be considered by the attorney general and the secretary of state. Moloney has stated that since the Court has ruled, either or both the secretary of state and attorney general can now act and kill the subpoenas without any further recourse to the US courts at all.





*Anthony McIntyre, Drogheda, Ireland, 13 January 2012*

*Credit: Peter Morrison/AP Photo*

Meanwhile, McIntyre has taken the case to the UK with a decision to challenge the PSNI using the Human Rights Act and the European Convention on Human Rights. The European Court on Human Rights ruled in favour of journalistic source confidentiality, in the landmark case *Goodwin v UK* in 1996.

The defence offered by Ed Moloney and Anthony McIntyre conflates journalistic ethics with academic ethics and freedoms. Moloney has no doubt about where his ethics lie. In an email interview he said: 'I always regarded this in exactly the same light as a journalistic enterprise, not least because some time in the future I might be writing about the contents, so yes, that principle underlined the project.'

Even if Boston College was not prepared to defy the law, by moving the archive out of the jurisdiction for instance, Moloney insists that the college assured him and Anthony McIntyre that it would be legally impossible to gain access to the files and that the researchers' assurances to the interviewees were

perfectly legal: 'We went forward with the assurance from [Boston College] that this was not a legal possibility [to demand the files]. However, once the subpoenas were served, I expected [Boston College] to resist to the utmost. In that regard we have been terribly disappointed. They abandoned the field after the first legal reverse when they should have insisted on appealing this as far as legally possible, ie to the Supreme Court.'

For journalists, the issue is uncomplicated. Defending sources is absolute. There is not a code of ethics anywhere that does not call in the strongest terms for a journalist always to maintain the anonymity of a confidential source. For instance, the National Union of Journalists of Britain and Ireland's code of conduct states categorically: 'A journalist shall protect confidential sources of information.' Contrast that with other clauses that contain qualifying statements such as 'subject to the justification by overriding considerations of the public interest'. Similarly, the International Federation of Journalists' code, which is often used as a model for journalists' codes in emerging democracies, states: 'The journalist shall observe professional secrecy regarding the source of information obtained in confidence.'

For Moloney, this is exactly the same issue, and he has been supported by a number of American journalism organisations, including the Committee for the Protection of Journalists and the Reporters Committee for Freedom of the Press. He has also received some academic support.

While such a ringing declaration of source protection does not exist to the same unequivocal and absolutist way in academia, there are concerns about a chilling effect on research. A participant at one oral history seminar recently commented that while they talked about confidentiality and agreements with interviewees on the use of the material, there was no mention of the 'elephant in the room', the Belfast Project.

The US government's views are clear. A year ago, the Justice Department stated in a brief that researchers should not expect a court to respect confidentiality pledges made to interview subjects, and that academic freedom was not a defence. Clifford M Kuhn, a historian at Georgia State University who is a past president of the Oral History Association, filed an affidavit on behalf of Boston College in which he said that if Britain's request was granted, the field of oral history could be damaged. Quoted in the publication *Inside Higher Ed*, he said in his brief: 'Trust and rapport are at the very core of the oral history enterprise.' As part of the process of 'informed consent', interview subjects request certain levels of confidentiality, and researchers approve them. 'The reason for this protocol is to foster candor and openness in the interview itself, so as to most fruitfully and fully enhance the historical record.'

The Belfast Project does highlight a development that appears to have been taking place quietly for some time, a merging of academic and journalistic research methods and practices in certain areas. Academics are taking on subjects that might have been the preserve of journalists in the past and journalists are producing books with an increasing degree of academic respectability. Technology is speeding things up and journalists are trained to respond quickly. Journalism itself has entered the academy and is having an impact on how research is undertaken in certain areas and also how quickly it sees the light of day.

Dr Diarmaid Ferriter, one of Ireland's foremost historians, suggests some caution should be invoked: 'Practitioners of oral history should follow the 30-year rule in relation to confidentiality that we also have for the release of state papers,' he told me. 'Academic historians do not generally approach the confidential sources issue in a way that journalists do for an obvious reason; they are rarely dealing with pressing matters of contemporary concern, nor should they be.' Ferriter makes the distinction between history and current affairs, adding that the interviewees are talking about people who are still alive. Commenting on oral history itself he said: 'Alongside the great opportunities it provides to talk directly to participants, it also raises issues of memory, skewed memory, agendas, settling of scores, etc.'

While the Belfast Project might be an extreme case for the oral historian – not many involve murder investigations – the academic community is still watching quietly in the wings. There is the obvious fear of sources drying up, but also that both historians and social scientists are looking at increasingly controversial subject matter, some of it illegal and some of it relating to international relations, or terrorism. Academics fear certain types of research will become impossible if they are perceived as an arm of the police, asking questions, interviewing people for that work to be then handed to the authorities. They, like journalists, want to be able to research, in the public interest, offering confidentiality where appropriate, if that means better research, with better information eventually making its way into the public domain. Whatever the outcome for the Belfast Project it is likely to have a profound impact on the growing area of oral history and probably social science research generally. □

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